

Money Laundering Policy Implementation Guide

- (3) (U) The term 'State' means any State of the U.S., the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the U.S.

4. (U) Currency and Foreign Transaction Reporting Act

(U) The Currency and Foreign Transactions Reporting Act was enacted in 1970 to regulate depository institutions such as banks, credit unions, and thrifts. The Bank Secrecy Act established requirements for recordkeeping and reporting to identify the origin and movement of cash or other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions. The BSA requires certain individuals, banks, and other financial institutions to file currency reports with the Department of the Treasury, identify the individuals conducting transactions, and maintain appropriate documentation of financial transactions.

(U) The Money Laundering Control Act (MLCA) of 1986 imposes criminal liability on individuals and financial institutions that knowingly assist in the laundering of money or structure transactions to avoid reporting them. The MLCA required banks to establish and maintain procedures designed to ensure compliance with the requirements of the BSA.

(U) The Suspicious Activity Report was created in 1996 as a means for financial institutions to report known or possible violations of criminal law or the BSA, or suspicious transactions related to money laundering. Filing was deemed mandatory for all entities defined as financial institutions. Since approximately 1990, the definition of financial institutions has been expanded to cover money services businesses, casinos, card clubs, securities firms, the insurance industry, and banks.

(U) FinCEN is the official administrator of the BSA.

- (1) (U) On October 26, 1970, the President signed the Bank Records and Foreign Transaction Act into law. Titles I and II of this act constitute what is commonly known as the BSA. The BSA is codified under 31 U.S.C. §§ 5311 - 5322 and must not be confused with the money laundering statutes (18 U.S.C. §§ 1956 and 1957). On October 26, 2001, Congress passed the USA PATRIOT Act, Public Law 107-56, 115 Statute 272, which made several amendments to the BSA. The intent behind the BSA is to enhance law enforcement investigations of criminal enterprises handling large sums of currency, whether the underlying criminal activity involves terrorism, drugs, organized crime, or white collar crime. The primary purpose of reporting requirements of the BSA is to identify the sources and movements of U.S. currency being transported into or out of the country, or being deposited into financial institutions. Further guidance may be found in the *Forfeiture Manual*.
- (2) (U) The BSA creates a "paper trail" to trace proceeds back to their illegal sources. The PATRIOT Act, U.S.C. § 5318(k)(3), provides that the Attorney General or the Secretary of the Treasury may serve a summons or subpoena on any foreign

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bank that has a correspondent account in the United States, and may request records relating to that correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The Attorney General has delegated this authority down to the Assistant Attorney General of the Criminal Division and the U.S. Attorneys. (U.S. Attorneys must obtain prior approval from the Criminal Division through the Office of International Affairs [see *United States Attorneys' Manual*, Section 9-13.525].) The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance. Any covered financial institution that maintains a correspondent account in the United States for a foreign bank must maintain records in the United States identifying the owners of the foreign bank and the name and address of a person who resides in the United States who is authorized to accept service of legal process for records regarding the correspondent account. When the covered financial institution receives a written request from a federal law enforcement officer for such information, it must provide the information to the requesting officer no later than seven days after receiving the request.

(U) BSA Reporting Requirements and IRS Form 8300

- (1) (U) Under the BSA requirements, financial institutions must report cash transactions that involve the payment, receipt, or transfer of cash over \$10,000. The report is made on FinCEN Form 104 (formerly Form 4789), CTR. Failure to report such currency is a violation of 31 U.S.C. § 5332(a), which makes it an offense for any person with the intent to evade a currency reporting requirement to conceal money in any method, and to transport, or attempt to transport, such currency into or out of the United States. The statute also provides for criminal forfeiture. See the *Forfeiture Manual* for further guidance.
- (2) (U) Casinos are required to report cash transactions over \$10,000. These reports are filed on FinCEN Form 103 or 103-N, CTR by Casino (CTRC).
- (3) (U) The BSA requires two types of foreign financial reports.
 - (a) (U) Individuals who transport cash or "monetary instruments" over \$10,000 into or out of the United States or receive such instruments in the United States from abroad must report the transaction. This report is made on FinCEN Form 105, (formerly United States Customs Service Form 4790), International Transportation of Currency or Monetary Instrument Report (CMIR).
 - (b) (U) Any person of the United States who has a financial interest in bank, securities, or other type of financial accounts in a foreign country must

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report certain information. This report is made on Department of Treasury Form 90-22.1, Foreign Bank and Financial Accounts Report (FBAR).

- (4) (U) In addition, under the authority of the Secretary of the Treasury, the IRS and FinCEN require that businesses or other entities file a report when a product or service is paid for with U.S. currency over \$10,000. For purposes of this form, currency is defined as cash and any monetary instruments up to \$10,000 in value. For instance, if the purchaser pays with \$4,000 in cash and a \$7,000 cashier's check, the seller must report this transaction. This report is made on IRS/FinCEN Form 8300.
- (5) (U) Money services businesses are required to be registered with FinCEN. Activities constituting MSBs include issuing money orders, traveler's checks, and stored value cards as well as money transmission, check cashing, and currency exchange. There may also be registration or licensing requirements imposed under state laws. MSBs register with FinCEN using FinCEN Form 107, Registration of Money Services Business (RMSB).
- (6) (U) Domestic banks, savings associations, thrift institutions, and credit unions may designate a customer as an exempt person for purposes of CTR reporting. These designations are reported using Department of the Treasury form TD F 90-22.53, Designation of Exempt Person (DEP).
- (7) (U) FinCEN requires the filing of SARs by certain financial institutions in various industries when certain criteria are met.
 - (a) (U) Depository financial institutions such as banks, savings associations, thrift institutions, and credit unions are required to report suspicious activity on FinCEN Form SAR.
 - (b) (U) Money services businesses are required to report suspicious activity on Treasury Form TD F 90-22.56, SAR by Money Services Business (SARM).
 - (c) (U) Casinos and card clubs are required to report suspicious activity on FinCEN Form 102, SAR by Casinos and Card Clubs (SARC).
 - (d) (U) The securities and futures industries are required to report suspicious activity on FinCEN Form 101, SAR by the Securities and Futures Industries (SARSF).
 - (e) (U) The insurance industry is required to report suspicious activity on FinCEN Form 108; SAR by Insurance Companies (SARI). This report was implemented in 2006.

(U) Access to BSA Report Information

- (1) (U) Under the BSA, the Department of the Treasury is responsible for collection, administration, and dissemination of BSA report information. ICE and IRS

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officials at their respective headquarters and field offices may disseminate BSA report information to federal, state, and local law enforcement agencies.

- (2) (U) Because BSA report information consists of personal and sensitive financial data, strict guidelines have been adopted for disseminating BSA report information. Under these guidelines, BSA report information includes all data reported to the Department of the Treasury on the forms outlined above.

(U) Procedures for Requesting BSA Report Information

(U) BSA report information can be obtained on criminal and counterterrorism investigations [redacted]

[redacted] in each field office, the Information Technology Centers, and the operational divisions at FBIHQ. [redacted]

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(U) BSA report information for foreign counterintelligence investigations [redacted]

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(U) Re-Dissemination of BSA Report Information

(U) FinCEN has strict guidelines pertaining to the re-dissemination of BSA report information [redacted]

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(U) BSA Information Defined

(U) BSA information is defined as a BSA report (e.g., SAR or currency transaction report) and any information in such a report that might reveal its existence.

(U) Conditions of Re-Dissemination with Domestic Law Enforcement

(U) [redacted]

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[Redacted]

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(U) Guidelines Summary

(U) [Redacted]

[Redacted]

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(U) [Redacted]

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(U) BSA-Derived Information

(U) [Redacted]

[Redacted]

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(U) Reminder on SAR Handling

[Redacted]

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[REDACTED]

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[REDACTED]

(U) [REDACTED]

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[REDACTED]

[REDACTED] There are strict statutory restrictions governing disclosures of SARs, or the fact that SARs have been filed [REDACTED]

[REDACTED]

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5. (U) USA PATRIOT Act - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

(U) The PATRIOT Act was passed by Congress in response to the terrorist attacks on September 11, 2001. Title III of the Act is the most significant section for both money laundering and terrorist financing, and is known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. Among other things, the act made it a crime to finance terrorism and modified the BSA by strengthening customer identification procedures; prohibiting financial institutions from conducting business with foreign shell banks; requiring financial institutions to establish due diligence procedures, to include those for foreign correspondent and private banking accounts; and improving information sharing between financial institutions and the U.S. Government.

(U) In addition, the PATRIOT Act also expanded The Anti-Money Laundering Program requirements to all entities defined as financial institutions; increased civil and criminal penalties for money laundering; provided the Secretary of the Treasury with authority to impose special measures on jurisdictions, institutions, or transactions that are a money laundering concern; facilitated records access and required banks to respond to regulatory requests for information within 120 hours; and required federal banking agencies to consider a bank's AML record when reviewing mergers and acquisitions.